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13 UNITED STATES DISTRICT COURT
14 CENTRAL DISTRICT OF CALIFORNIA
15 WESTERN DIVISION

16 RAW TALENT, INC., a California
17 corporation,

18 Plaintiff,

19 vs.

20 BETHENNY FRANKEL, an
21 individual; and DOES 1 through 10,
22 inclusive,

23 Defendants.

Case No. CV11-06577 DSF (FMOx)

~~JOINT STIPULATION AND~~
~~PROPOSED~~ PROTECTIVE
ORDER AND CONFIDENTIALITY
AGREEMENT

NOTE CHANGES MADE BY THE COURT.

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1 Plaintiff Raw Talent, Inc. and Defendant Bethenny Frankel, by and through
 2 their respective counsel of record, stipulate to and jointly request that the Court enter
 3 a Protective Order in this action as follows:

4 **GOOD CAUSE STATEMENT:**

5 This action arises out of an alleged oral talent management agreement
 6 between Plaintiff Raw Talent, Inc. and Defendant Bethenny Frankel. Raw Talent
 7 contends, among other things, that Ms. Frankel promised to pay it a ten percent
 8 commission from all gross earnings Ms. Frankel received or earned on any
 9 agreement, arrangement, or project in which negotiations had commenced between
 10 August and November 2008, when Raw Talent claims it was her manager.

11 This action will resolve Raw Talent's claims that it is entitled to a
 12 commission on the March 2011 sale of assets of Skinny Girl Cocktails LLC, a
 13 private limited liability company. Raw Talent alleges that Ms. Frankel breached the
 14 oral contract by failing to pay Raw Talent a commission in connection with the
 15 Skinny Girl asset sale, and that it is owed \$12 million based on that sale. Ms.
 16 Frankel denies that the alleged oral agreement was ever made, and further contends
 17 that Raw Talent has no right to compensation because it was not involved in the
 18 transaction which it seeks to commission.

19 Discovery in this lawsuit will involve numerous sensitive documents and
 20 highly confidential information. For example, Raw Talent has requested extensive
 21 documents and information pertaining to the sale of Skinny Girl Cocktails LLC's
 22 assets to Jim Beam Brands Co., including confidential agreements and draft
 23 agreements. Terms of the asset sale, including the sale price, have not been publicly
 24 disclosed by any of the parties to the transaction, and disclosure is restricted by a
 25 confidentiality agreement.

26 As another example, Raw Talent seeks extensive documents and information
 27 concerning the formation, structure and personnel of Skinny Girl Cocktails LLC,
 28 and regarding its business and finances. Raw Talent also seeks detailed financial

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1 information regarding Ms. Frankel's past, current, and anticipated future
 2 compensation relating to the sale of Skinny Girl Cocktails LLC's assets.

3 The information sought by Plaintiff is highly confidential, has not been
 4 publicly disclosed, includes private financial information of Ms. Frankel, Jim Beam
 5 Brands Co. and non-party Skinny Girl Cocktails LLC, and sensitive business
 6 information such as the marketing strategy, product roll-out plans, and information
 7 regarding product formulas, suppliers, distributors, etc., for Skinnygirl cocktail
 8 products, which is of critical importance in the very competitive ready-to-drink
 9 cocktail market.

10 In addition, the personnel information and financial information that Plaintiff
 11 seeks implicates the privacy rights of third parties as well as Ms. Frankel.

12 The agreements, draft agreements, communications, projections, business
 13 plans, product development and marketing plans, and financial information and
 14 projections contain confidential, proprietary information that has not been
 15 disseminated to the public at large and has been the subject of reasonable efforts by
 16 the respective parties to maintain its secrecy.

17 Special protection from the public disclosure of this confidential, proprietary
 18 information is warranted in order to prevent the use of such information for
 19 purposes not related to this litigation. By way of example only:

20 (a) disclosure of confidential information concerning the Skinny Girl asset
 21 sale will prejudice Ms. Frankel's and Jim Beam Brands Co.'s (and its related
 22 entities') competitive position and ability to develop and market new products,
 23 including in the ready-to-drink cocktail market;

24 (b) confidential information regarding development, marketing, manufacture,
 25 distribution and sales of Skinnygirl cocktail products constitutes trade secrets and
 26 confidential business information, disclosure of which will prejudice Ms. Frankel's
 27 and Jim Beam Brands Co.'s (and its related entities') competitive position and
 28 ability to develop and market new products, including in the ready-to-drink cocktail

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1 market;

2 (c) disclosure of confidential information, communications and documents,
 3 including draft agreements and agreements, regarding the Skinny Girl Cocktails
 4 LLC asset sale implicates Ms. Frankel's and Jim Beam Brands Co.'s (and its related
 5 entities') privacy rights, as well as Ms. Frankel's confidentiality obligations under
 6 the agreements, and would be detrimental to the competitive market position of Ms.
 7 Frankel, Jim Beam Brands Co. (and its related entities), and the Skinnygirl product
 8 line;

9 (d) disclosure of Ms. Frankel's and third-party Skinny Girl Cocktails LLC's
 10 financial information implicates their financial privacy rights; and as to Ms. Frankel,
 11 is likely to impact her ability to further develop other Skinnygirl product lines
 12 and/or other businesses;

13 (e) disclosure of information regarding Skinny Girl Cocktails LLC's
 14 personnel implicates the privacy rights of Ms. Frankel and third parties.

15 The parties cannot reasonably anticipate all information that will be requested
 16 and produced in this action, and must therefore reserve the right to designate as
 17 "Confidential" or "Highly Confidential – Attorneys' Eyes Only" any such document
 18 or category of information which they in good faith believe is entitled to the
 19 designation even if not expressly mentioned herein.

20 Given the foregoing, the parties hereby stipulate to and petition the Court to
 21 enter the following Stipulated Protective Order.

22 **PROTECTIVE ORDER:**

23 1. Given the nature of the claims alleged herein, Raw Talent and Frankel
 24 (referred to individually as a "Party" or collectively as the "Parties") anticipate that
 25 certain private personal and/or proprietary business information and documents may
 26 be produced during discovery in this action. In order to facilitate the fair and
 27 efficient completion of pretrial discovery while at the same time protecting the
 28 Parties' and any Third Party's rights in confidential materials and minimizing the

1 need for judicial intervention in the discovery process, the Parties have agreed to the
2 terms of this Protective Order.

3 1.1 The Parties and Third Parties have a strong interest in maintaining strict
4 confidentiality regarding private personal and/or competitively sensitive
5 information. Accordingly, the protection of this Order may be invoked with respect
6 to the following information that a Party or Third Party maintains in confidence
7 (collectively, the "Confidential Information"):

8 a. As a general guideline, information or materials that may be
9 disclosed to the parties for the purposes of this litigation, but which must be
10 protected against disclosure to third parties, and which qualify for protection under
11 Federal Rule of Civil Procedure 26(e), in that their disclosure would subject a party
12 to annoyance, embarrassment, oppression, or undue burden or expense. Such
13 information may include, without limitation, communications, negotiations,
14 contracts, and other documents pertaining to Ms. Frankel's career, business and/or
15 professional opportunities;

16 b. Information that constitutes a "trade secret" in accordance with
17 the Uniform Trade Secrets Act, including a formula, pattern, compilation, program,
18 device, method, technique, or process that derives independent economic value,
19 actual or potential, from not being generally known to, and not being readily
20 ascertainable by proper means by, other persons who can obtain economic value
21 from its disclosure or use; and is the subject of efforts that are reasonable under the
22 circumstances to maintain its secrecy. Such information would include, without
23 limitation: product formulas/recipes; customer lists; supplier lists; and distributor
24 lists;

25 c. Information that reflects non-public business or financial
26 strategies, and/or confidential competitive information. Such information would
27 include, without limitation: contracts, negotiations, memoranda, correspondence and
28 other information regarding corporate structure, organization, acquisitions or other

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1 transactions, *e.g.*, of Skinny Girl Cocktails LLC, and pertaining to the sale of assets
 2 of Skinny Girl Cocktails LLC; contracts, bids and negotiations for materials;
 3 contracts, bids and negotiations with suppliers, manufacturers, distributors, retailers,
 4 etc.; product development plans and/or schedules; business plans and/or schedules;
 5 marketing strategy plans and/or reports; market surveys; and information regarding
 6 product sales.

7 1.2 Information that is subject to federal or state privacy rights, including
 8 private consumer, personal and/or financial information. Such information would
 9 include, without limitation, information pertaining to revenues, profits, losses,
 10 compensation, financial projections, tax-related information, and personnel files/
 11 information. The protection of this Order may also be invoked by any Party or
 12 Third Party with respect to any extremely sensitive Confidential Information
 13 disclosure of which to another Party or Non-Party would create a substantial risk of
 14 serious harm that could not be avoided by less restrictive means. (“Highly
 15 Confidential—Attorneys’ Eyes Only”).

16 2. Any and all documents or writings (as defined in Rule 1001 of the
 17 Federal Rules of Evidence) containing Confidential Information or Highly
 18 Confidential – Attorneys’ Eyes Only Information shall be designated by placing on
 19 each page of it, by means of a rubber stamp or otherwise, the notice
 20 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
 21 ONLY” (or words substantially to that effect) in a manner that will not interfere
 22 with the legibility of the documents.

23 3. Counsel for the designating Party or Third Party may designate
 24 deposition testimony or exhibits concerning or containing Confidential or Highly
 25 Confidential – Attorneys’ Eyes Only Information by indicating on the record at the
 26 deposition that the testimony is confidential. When an exhibit containing
 27 Confidential Information or Highly Confidential – Attorneys’ Eyes Only
 28 Information is introduced at a deposition, the reporter shall mark the face of the

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1 transcript with "PORTIONS OF THIS TRANSCRIPT ARE DESIGNATED AS
 2 CONFIDENTIAL (or HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY)
 3 – SUBJECT TO PROTECTIVE ORDER." Counsel shall ensure that exhibits and
 4 portions of transcripts designated as Confidential Information or Highly
 5 Confidential – Attorneys' Eyes Only Information are redacted or removed from
 6 transcripts before the transcripts are provided to any person not permitted to receive
 7 the Information under this Order. If a Party or Third Party wishes to designate
 8 documents, testimony or exhibits as Confidential or Highly Confidential –
 9 Attorneys' Eyes Only Information after a deposition is concluded, it may do so by
 10 notifying counsel for the Parties in writing of the documents, testimony or exhibits
 11 that it wishes to treat as Confidential or Highly Confidential – Attorneys' Eyes Only
 12 Information and, upon receipt of the notice, the Parties thereafter shall treat the
 13 information as Confidential or Highly Confidential – Attorneys' Eyes Only
 14 Information in accordance with this Order, *provided, however*, that any disclosure of
 15 the Information before receipt of the notice shall not be deemed a violation of this
 16 Order.

17 Transcripts containing Confidential Information or Highly Confidential
 18 – Attorneys' Eyes Only Information shall have an obvious legend on the title page
 19 that the transcript contains Confidential Information or Highly Confidential –
 20 Attorneys' Eyes Only, and the title page shall be followed by a list of all pages
 21 (including line numbers as appropriate) that have been designated as protected
 22 material and the level of protection being asserted by the designating Party. The
 23 designating Party shall inform the court reporter of these requirements.

24 4. Confidential and Highly Confidential – Attorneys' Eyes Only
 25 Information shall remain in the exclusive possession of the counsel of record to
 26 whom these materials are produced except as otherwise provided in this Order.
 27 Confidential and Highly Confidential – Attorneys' Eyes Only Information shall be
 28 used only in this litigation and shall be disclosed only to those individuals identified

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1 in Paragraph 6 below and solely for purposes of this litigation and for no other
 2 purpose whatsoever. No Confidential or Highly Confidential – Attorneys’ Eyes
 3 Only Information shall be disclosed to the media or posted on the Internet by any
 4 Party or at any Party's direction.

5 5. Confidential Information may be disclosed only to:

- 6 a. The Parties' attorneys of record and their staff in this case;
- 7 b. Officers and current employees, agents, and representatives of
- 8 corporate Parties whose knowledge of the Confidential Information is necessary to
- 9 enable the Parties to prepare for trial, to try this proceeding, or to engage in
- 10 appellate proceedings in this case;
- 11 c. Independent experts and consultants retained in this case by a
- 12 Party or its attorneys of record;
- 13 d. Deposition reporters and their support personnel for purposes of
- 14 preparing deposition transcripts;
- 15 e. Any deposition deponent for purposes of a deposition held in
- 16 connection with this case, where Confidential Information is relevant to a subject
- 17 matter of which the deponent has personal knowledge;
- 18 f. The authors, senders, addressees and copy recipients of the
- 19 Confidential Information;
- 20 g. The judge, jury, clerk and other personnel in the department to
- 21 which this action may be assigned.
- 22 h. Percipient witnesses called to testify at trial, where Confidential
- 23 Information is relevant to a subject matter of which the deponent has personal
- 24 knowledge ; and
- 25 i. Copy services and/or similar professional vendors who provide
- 26 litigation support that is reasonably necessary for this litigation.

27 6. The parties agree to take all available precautions to protect Highly
 28 Confidential – Attorneys’ Eyes Only Information and to maintain records containing

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1 such information in absolute secrecy and confidentiality. Highly Confidential –
 2 Attorneys' Eyes Only Information may be disclosed only to:

- 3 a. The Parties' attorneys of record and their staff in this case;
- 4 b. Independent experts and consultants retained in this case by a
 5 Party or its attorneys of record and to whom disclosure is reasonably necessary for
 6 this litigation;
- 7 c. Deposition reporters and their support personnel for purposes of
 8 preparing deposition transcripts;
- 9 d. The authors, senders, addressees and copy recipients of the
 10 Confidential Information;
- 11 e. The judge, jury, clerk and other personnel in the department to
 12 which this action may be assigned;
- 13 f. Percipient witnesses called to testify at trial, where Confidential
 14 Information is relevant to a subject matter of which the deponent has personal
 15 knowledge; and
- 16 g. Copy services and similar professional vendors who provide
 17 litigation support that is reasonably necessary for this litigation.

18 7. Before obtaining access to any material designated as
 19 CONFIDENTIAL or HIGHLY CONFIDENTIAL-ATTORNEYS' EYES ONLY
 20 pursuant to this Order, the persons described in paragraph 5(c) and 6(b) must signify
 21 assent to the terms of this Order by executing the Confidentiality Agreement
 22 attached as Appendix A, indicating that he or she has read and understands this
 23 Order and agrees to be bound by its terms.

24 8. Any Third Party may produce documents pursuant to the protection of
 25 this Stipulation and Order provided he/she/it states in writing that the subject
 26 production is made pursuant to the terms hereof.

27 9. The Parties acknowledge that the procedures for filing records under
 28 seal are set forth in Rule 79-5 of the Local Rules of the Central District of

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California, *et seq.* Before any material or information designated
 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL-ATTORNEYS' EYES
 ONLY" may be disclosed orally in Court or in a writing filed in this action, the
 Parties will meet and confer in an attempt to reach agreement on how to reasonably
 avoid the need to disclose the material or information, consistent with the objectives
 of the party who wishes to make use of the material or information, by, for example,
 redacting or summarizing material. If the Parties are unable to reach an agreement,
 the Party seeking to submit such Confidential Information shall seek an order
 sealing the material in accordance with Local Rule 79-5 *et seq.*

10. This Stipulation shall be without prejudice to the rights of the Parties to
 apply to the Court for additional or different protection, to secure greater protection
 for particularly sensitive information, or for the removal of protection, if they deem
 it necessary to do so. Any Party may challenge a designation of Confidential and
 Confidential – Attorneys' Eyes Only Information at any time and nothing contained
 herein shall be deemed an admission that any particular document is subject to a
 "Confidential" or "Confidential – Attorneys' Eyes Only" designation. Unless a
 prompt challenge to a designating Party's protection designation is necessary to
 avoid foreseeable substantial unfairness, unnecessary economic burdens, or a later
 significant disruption or delay of the litigation, a Party does not waive its right to
 challenge a protection designation by electing not to mount a challenge promptly
 after the original designation or redaction is disclosed. The challenging Party shall
 initiate the challenge process by following the discovery dispute procedures set out
 in Local Rule 37.

Within the initial written notice required by Local Rule 37-1 requesting a
 meet and confer conference with the designating Party, the challenging Party shall
 set forth each designation of protection it is challenging and describe the basis for
 each challenge. To avoid ambiguity as to whether a challenge has been made, the
 written notice must also recite that the challenge to confidentiality, high

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1 confidentiality, or is being made according to this specific paragraph of the
 2 Protective Order. This initial notice and request to meet and confer are subject to
 3 the same limitations as the documents bearing the designation, to the extent they
 4 reference specific information and/or language taken from such designated
 5 documents. In conferring, the challenging Party must explain the basis for its belief
 6 that the protection designation was not proper and must give the designating Party
 7 an opportunity to review the designated material, to reconsider the circumstances,
 8 and, if no change in designation is offered, to explain the basis for the chosen
 9 designation. A challenging Party may proceed to the next stage of the challenge
 10 process only if it has engaged in this meet and confer process first or establishes that
 11 the designating Party is unwilling to participate in the meet and confer process in a
 12 timely manner.

13 If the Parties cannot resolve a challenge without court intervention, the
 14 challenging Party shall initiate the procedures for joint stipulation pursuant to Local
 15 Rule 37-2. As with the meet and confer request and initial challenge notice, any
 16 specific references to designated materials and documents and/or the information
 17 contained therein must be protected from disclosure per the agreement set out
 18 above, and the type of designation, unless and until the Court decides the challenged
 19 issue differently. Such protection from disclosure may require submitting pleadings
 20 and documents to the Court pursuant to its rules and procedures governing
 21 submissions under seal.

22 11. This Stipulation shall continue in full force and effect with respect to
 23 the Confidential and Highly Confidential – Attorneys’ Eyes Only Information,
 24 through and until the commencement of trial. Prior to the commencement of trial,
 25 the Parties will exchange lists of the exhibits which they intend to use at trial, and
 26 each Party shall return to the Producing Party or destroy any information designated
 27 in this action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL-
 28 ATTORNEYS’ EYES ONLY,” which has not been designated as an exhibit to be

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1 used at trial, and no Party, expert, consultant or any other person or entity to whom
 2 the documents were produced shall retain any copies of the Information, except that
 3 counsel of record for each party may retain a file set for record keeping/insurance
 4 purposes. The Parties understand and agree that at the time that trial commences,
 5 any information designated in this action as "CONFIDENTIAL" or "HIGHLY
 6 CONFIDENTIAL-ATTORNEYS' EYES ONLY" that is contained in the Court's
 7 file or subsequently presented to the Court, shall be deemed public and not
 8 confidential, unless the Court orders otherwise, and in any event, shall not be
 9 returned by the Court to the Producing Party.

10 12. This Stipulation is without prejudice to the right of any Party or Third
 11 Party to object to the discovery, production or admissibility of any information,
 12 document or evidence. The designation of information as CONFIDENTIAL or
 13 HIGHLY CONFIDENTIAL-ATTORNEYS' EYES ONLY pursuant to this
 14 Stipulation shall not be construed as an admission of the relevance of the
 15 Confidential and Highly Confidential – Attorneys' Eyes Only Information in the
 16 litigation.

17 13. Nothing contained in this Stipulation and Protective Order shall prevent
 18 any Party or Third Party from using or disclosing its own Confidential or Highly
 19 Confidential – Attorneys' Eyes Only Information without having to comply with the
 20 terms of this Stipulation, subject, however, to any privacy limitations or restrictions
 21 that may apply (for example, HIPAA).

22 14. Should any person bound hereby receive a subpoena, civil investigation
 23 demand, or other process from a third party that may be construed to require the
 24 disclosure of Confidential or Highly Confidential – Attorneys' Eyes Only
 25 Information in any form, said person shall give notice and send a copy of the
 26 subpoena or demand by fax and e-mail to the Party who designated the information
 27 that is sought no later than two business days after receiving the subpoena or
 28 demand, unless the date for production or response is not at least two days away, in

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1 which case, notice and a copy of the subpoena or demand shall be provided
 2 immediately (before the scheduled response date). The Party receiving the
 3 subpoena or demand shall object to the subpoena or demand and advise the
 4 requesting party that the materials are subject to this Protective Order.

5 If the designating Party timely seeks a protective order, the Party
 6 served with the subpoena or court order shall not produce any information
 7 designated in this action as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL-
 8 ATTORNEYS' EYES ONLY" before a determination by the court from which the
 9 subpoena or order issued, unless the Party has obtained the designating Party's
 10 permission. Nothing in these provisions shall be construed as authorizing or
 11 encouraging a receiving Party in this action to disobey a lawful directive from
 12 another court.

13 15. The Court shall retain jurisdiction to make amendments, modifications,
 14 deletions and additions to the order pursuant to this Stipulation as the Court may
 15 from time to time deem necessary or appropriate.

16 16. Within 60 days after the final disposition of this action, each Party must
 17 return all Confidential or Highly Confidential – Attorneys' Eyes Only Information
 18 to the Producing Party or destroy such material (except that counsel of record for
 19 each party may retain a file set for record keeping/insurance purposes). Even after
 20 final disposition of this litigation, the confidentiality obligations imposed by this
 21 Order shall remain in effect until a designating Party agrees otherwise in writing or a
 22 court order otherwise directs. Final disposition shall be deemed to be the later of (1)
 23 dismissal of all claims and defenses in this action, with or without prejudice; and (2)
 24 final judgment herein after the completion and exhaustion of all appeals, rehearings,
 25 remands, trials, or reviews of this action, including the time limits for filing any
 26 motions or applications for extension of time pursuant to applicable law.

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1 DATED: April 5, 2012

KINSELLA WEITZMAN ISER KUMP &
ALDISERT LLP

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3
4 Bv: /s/ Howard Weitzman
Howard Weitzman
Attorneys for Defendant Bethenny Frankel

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6
7 DATED: April 5, 2012

FREEDMAN & TAITELMAN LLP

8
9 Bv: /s/ Bryan J. Freedman
Bryan J. Freedman
Attorneys for Plaintiff Raw Talent, Inc.

10
11 DATED: April 5, 2012

LAW OFFICES OF JOSHUA G. BLUM, PC

12
13
14 Bv: /s/ Joshua G. Blum
Joshua G. Blum
Attorneys for Plaintiff Raw Talent, Inc.

15
16
17 IT IS SO ORDERED.

18 DATED: 4-11-12

19 F. M. Uly
20 UNITED STATES MAGISTRATE JUDGE
21
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28

APPENDIX A

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

RAW TALENT, INC., a California
corporation,

Plaintiff,

vs.

BETHENNY FRANKEL, an
individual; and DOES 1 through 10,
inclusive,

Defendants.

Case No. CV11-06577 DSF (FMOx)

**DECLARATION RE
STIPULATION AND PROTECTIVE
ORDER RE CONFIDENTIALITY
OF DISCOVERY MATERIALS**

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1 I, the undersigned, declare as follows:

2 1. I have read in its entirety the PROTECTIVE ORDER AND
3 CONFIDENTIALITY AGREEMENT ("Order") entered by Order of The Honorable
4 Fernando M. Olguin of the United States District Court for the Central District of
5 California in this lawsuit, and know the contents thereof.

6 2. I agree to comply with and to be bound by all the terms of this Order
7 and I understand and acknowledge that failure to comply could expose me to
8 sanctions and punishment in the nature of contempt.

9 3. I promise that I will not disclose in any manner any Confidential or
10 Highly Confidential – Attorneys' Eyes Only Information that is subject to this Order
11 to any person or entity except in strict compliance with the provisions of this Order.

12 4. I submit to the jurisdiction of the United States District Court for the
13 Central District of California for the limited purpose of any proceeding to enforce
14 the terms of the Order, even if such enforcement proceedings occur after termination
15 of this lawsuit.

16
17 I declare under penalty of perjury under the laws of the United States of
18 America that the foregoing is true and correct.

19
20 Executed on _____ 20__, at _____.

21 _____
22 _____

23 _____

24

25

26

27

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